

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN SENATE MAY 11, 2016

AMENDED IN SENATE APRIL 26, 2016

SENATE BILL

No. 1084

Introduced by Senator Hancock

February 17, 2016

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as amended, Hancock. Sentencing.

Existing law authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole to submit a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. Existing law prohibits a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from filing a petition for recall and resentencing. Existing law establishes certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. Existing law requires the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified, and grants the court discretion to recall and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. If the sentence is not recalled, existing law permits the defendant to submit

another petition for recall when the defendant has been committed to the custody of the department for at least 20 years, and if the sentence is not recalled at that hearing, existing law allows the defendant to file another petition after having served 24 years.

This bill would instead authorize ~~those prisoners~~ *that prisoner* to submit the petition for recall and resentencing after he or she has been incarcerated for 15 years. The bill would allow a defendant whose sentence was recalled, but who was resentenced to life without the possibility of parole, to make additional petitions as specified above. The bill would also require a court, if it finds by a preponderance of the evidence that one or more of the qualifying criteria is true, to recall the sentence previously ordered and hold a hearing to resentence the defendant. The bill would make other conforming changes.

Under existing law, most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper lengths of terms. Until January 1, 2017, the choice of the appropriate term that is to best serve the interests of justice rests within the sound discretion of the court. On and after January 1, 2017, existing law requires the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.

This bill would extend to January 1, 2022, the authority of the court to, in its sound discretion, impose the appropriate term that best serves the interests of justice. The bill would, on and after January 1, 2022, require the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.

This bill would incorporate additional changes to Section 1170 of the Penal Code, proposed by AB 2590, that would become operative only if this bill and AB 2590 are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1170 of the Penal Code, as amended by
- 2 Section 1 of Chapter 378 of the Statutes of 2015, is amended to
- 3 read:
- 4 1170. (a) (1) The Legislature finds and declares that the
- 5 purpose of imprisonment for crime is punishment. This purpose
- 6 is best served by terms proportionate to the seriousness of the

1 offense with provision for uniformity in the sentences of offenders
2 committing the same offense under similar circumstances. The
3 Legislature further finds and declares that the elimination of
4 disparity and the provision of uniformity of sentences can best be
5 achieved by determinate sentences fixed by statute in proportion
6 to the seriousness of the offense as determined by the Legislature
7 to be imposed by the court with specified discretion.

8 (2) Notwithstanding paragraph (1), the Legislature further finds
9 and declares that programs should be available for inmates,
10 including, but not limited to, educational programs, that are
11 designed to prepare nonviolent felony offenders for successful
12 reentry into the community. The Legislature encourages the
13 development of policies and programs designed to educate and
14 rehabilitate nonviolent felony offenders. In implementing this
15 section, the Department of Corrections and Rehabilitation is
16 encouraged to give priority enrollment in programs to promote
17 successful return to the community to an inmate with a short
18 remaining term of commitment and a release date that would allow
19 him or her adequate time to complete the program.

20 (3) In any case in which the punishment prescribed by statute
21 for a person convicted of a public offense is a term of imprisonment
22 in the state prison or a term pursuant to subdivision (h) of any
23 specification of three time periods, the court shall sentence the
24 defendant to one of the terms of imprisonment specified unless
25 the convicted person is given any other disposition provided by
26 law, including a fine, jail, probation, or the suspension of
27 imposition or execution of sentence or is sentenced pursuant to
28 subdivision (b) of Section 1168 because he or she had committed
29 his or her crime prior to July 1, 1977. In sentencing the convicted
30 person, the court shall apply the sentencing rules of the Judicial
31 Council. The court, unless it determines that there are
32 circumstances in mitigation of the punishment prescribed, shall
33 also impose any other term that it is required by law to impose as
34 an additional term. Nothing in this article shall affect any provision
35 of law that imposes the death penalty, that authorizes or restricts
36 the granting of probation or suspending the execution or imposition
37 of sentence, or expressly provides for imprisonment in the state
38 prison for life, except as provided in paragraph (2) of subdivision
39 (d). In any case in which the amount of preimprisonment credit
40 under Section 2900.5 or any other law is equal to or exceeds any

1 sentence imposed pursuant to this chapter, except for the remaining
2 portion of mandatory supervision pursuant to subparagraph (B) of
3 paragraph (5) of subdivision (h), the entire sentence shall be
4 deemed to have been served, except for the remaining period of
5 mandatory supervision, and the defendant shall not be actually
6 delivered to the custody of the secretary or to the custody of the
7 county correctional administrator. The court shall advise the
8 defendant that he or she shall serve an applicable period of parole,
9 postrelease community supervision, or mandatory supervision,
10 and order the defendant to report to the parole or probation office
11 closest to the defendant's last legal residence, unless the in-custody
12 credits equal the total sentence, including both confinement time
13 and the period of parole, postrelease community supervision, or
14 mandatory supervision. The sentence shall be deemed a separate
15 prior prison term or a sentence of imprisonment in a county jail
16 under subdivision (h) for purposes of Section 667.5, and a copy
17 of the judgment and other necessary documentation shall be
18 forwarded to the secretary.

19 (b) When a judgment of imprisonment is to be imposed and the
20 statute specifies three possible terms, the choice of the appropriate
21 term shall rest within the sound discretion of the court. At least
22 four days prior to the time set for imposition of judgment, either
23 party or the victim, or the family of the victim if the victim is
24 deceased, may submit a statement in aggravation or mitigation. In
25 determining the appropriate term, the court may consider the record
26 in the case, the probation officer's report, other reports, including
27 reports received pursuant to Section 1203.03, and statements in
28 aggravation or mitigation submitted by the prosecution, the
29 defendant, or the victim, or the family of the victim if the victim
30 is deceased, and any further evidence introduced at the sentencing
31 hearing. The court shall select the term which, in the court's
32 discretion, best serves the interests of justice. The court shall set
33 forth on the record the reasons for imposing the term selected and
34 the court may not impose an upper term by using the fact of any
35 enhancement upon which sentence is imposed under any provision
36 of law. A term of imprisonment shall not be specified if imposition
37 of sentence is suspended.

38 (c) The court shall state the reasons for its sentence choice on
39 the record at the time of sentencing. The court shall also inform
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section
2 3000 or 3000.08 or postrelease community supervision for a period
3 as provided in Section 3451.

4 (d) (1) When a defendant subject to this section or subdivision
5 (b) of Section 1168 has been sentenced to be imprisoned in the
6 state prison or county jail pursuant to subdivision (h) and has been
7 committed to the custody of the secretary or the county correctional
8 administrator, the court may, within 120 days of the date of
9 commitment on its own motion, or at any time upon the
10 recommendation of the secretary or the Board of Parole Hearings
11 in the case of state prison inmates, or the county correctional
12 administrator in the case of county jail inmates, recall the sentence
13 and commitment previously ordered and resentence the defendant
14 in the same manner as if he or she had not previously been
15 sentenced, provided the new sentence, if any, is no greater than
16 the initial sentence. The court resentencing under this subdivision
17 shall apply the sentencing rules of the Judicial Council so as to
18 eliminate disparity of sentences and to promote uniformity of
19 sentencing. Credit shall be given for time served.

20 (2) (A) (i) When a defendant who was under 18 years of age
21 at the time of the commission of the offense for which the
22 defendant was sentenced to imprisonment for life without the
23 possibility of parole has been incarcerated for at least 15 years,
24 the defendant may submit to the sentencing court a petition for
25 recall and resentencing.

26 (ii) Notwithstanding clause (i), this paragraph shall not apply
27 to defendants sentenced to life without parole for an offense where
28 it was pled and proved that the defendant tortured, as described in
29 Section 206, his or her victim or the victim was a public safety
30 official, including any law enforcement personnel mentioned in
31 Chapter 4.5 (commencing with Section 830) of Title 3, or any
32 firefighter as described in Section 245.1, as well as any other officer
33 in any segment of law enforcement who is employed by the federal
34 government, the state, or any of its political subdivisions.

35 (B) The defendant shall file the original petition with the
36 sentencing court. A copy of the petition shall be served on the
37 agency that prosecuted the case. The petition shall include the
38 defendant's statement that he or she was under 18 years of age at
39 the time of the crime and was sentenced to life in prison without
40 the possibility of parole, the defendant's statement describing his

1 or her remorse and work towards rehabilitation, and the defendant's
2 statement that one of the following is true:

3 (i) The defendant was convicted pursuant to felony murder or
4 aiding and abetting murder provisions of law.

5 (ii) The defendant does not have juvenile felony adjudications
6 for assault or other felony crimes with a significant potential for
7 personal harm to victims prior to the offense for which the sentence
8 is being considered for recall.

9 (iii) The defendant committed the offense with at least one adult
10 codefendant.

11 (iv) The defendant has performed acts that tend to indicate
12 rehabilitation or the potential for rehabilitation, including, but not
13 limited to, availing himself or herself of rehabilitative, educational,
14 or vocational programs, if those programs have been available at
15 his or her classification level and facility, using self-study for
16 self-improvement, or showing evidence of remorse.

17 (C) If any of the information required in subparagraph (B) is
18 missing from the petition, or if proof of service on the prosecuting
19 agency is not provided, the court shall return the petition to the
20 defendant and advise the defendant that the matter cannot be
21 considered without the missing information.

22 (D) A reply to the petition, if any, shall be filed with the court
23 within 60 days of the date on which the prosecuting agency was
24 served with the petition, unless a continuance is granted for good
25 cause.

26 (E) If the court finds by a preponderance of the evidence that
27 one or more of the statements specified in clauses (i) to (iv),
28 inclusive, of subparagraph (B) is true, the court shall recall the
29 sentence and commitment previously ordered and hold a hearing
30 to resentence the defendant in the same manner as if the defendant
31 had not previously been sentenced, provided that the new sentence,
32 if any, is not greater than the initial sentence. Victims, or victim
33 family members if the victim is deceased, shall retain the rights to
34 participate in the hearing.

35 (F) The factors that the court may consider when determining
36 whether to resentence the defendant to a term of imprisonment
37 with the possibility of parole include, but are not limited to, the
38 following:

39 (i) The defendant was convicted pursuant to felony murder or
40 aiding and abetting murder provisions of law.

1 (ii) The defendant does not have juvenile felony adjudications
2 for assault or other felony crimes with a significant potential for
3 personal harm to victims prior to the offense for which the
4 defendant was sentenced to life without the possibility of parole.

5 (iii) The defendant committed the offense with at least one adult
6 codefendant.

7 (iv) Prior to the offense for which the defendant was sentenced
8 to life without the possibility of parole, the defendant had
9 insufficient adult support or supervision and had suffered from
10 psychological or physical trauma, or significant stress.

11 (v) The defendant suffers from cognitive limitations due to
12 mental illness, developmental disabilities, or other factors that did
13 not constitute a defense, but influenced the defendant's
14 involvement in the offense.

15 (vi) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or showing evidence of remorse.

21 (vii) The defendant has maintained family ties or connections
22 with others through letter writing, calls, or visits, or has eliminated
23 contact with individuals outside of prison who are currently
24 involved with crime.

25 (viii) The defendant has had no disciplinary actions for violent
26 activities in the last five years in which the defendant was
27 determined to be the aggressor.

28 (G) The court shall have the discretion to resentence the
29 defendant in the same manner as if the defendant had not
30 previously been sentenced, provided that the new sentence, if any,
31 is not greater than the initial sentence. The discretion of the court
32 shall be exercised in consideration of the criteria in subparagraph
33 (F). Victims, or victim family members if the victim is deceased,
34 shall be notified of the resentencing hearing and shall retain their
35 rights to participate in the hearing.

36 (H) If the sentence is not recalled or the defendant is resentenced
37 to imprisonment for life without the possibility of parole, the
38 defendant may submit another petition for recall and resentencing
39 to the sentencing court when the defendant has been committed
40 to the custody of the department for at least 20 years. If the

1 sentence is not recalled or the defendant is resentenced to
2 imprisonment for life without the possibility of parole under that
3 petition, the defendant may file another petition after having served
4 24 years. The final petition may be submitted, and the response to
5 that petition shall be determined, during the 25th year of the
6 defendant's sentence.

7 (I) In addition to the criteria in subparagraph (F), the court may
8 consider any other criteria that the court deems relevant to its
9 decision, so long as the court identifies them on the record,
10 provides a statement of reasons for adopting them, and states why
11 the defendant does or does not satisfy the criteria.

12 (J) This subdivision shall have retroactive application.

13 (K) Nothing in this paragraph is intended to diminish or abrogate
14 any rights or remedies otherwise available to the defendant.

15 (e) (1) Notwithstanding any other law and consistent with
16 paragraph (1) of subdivision (a), if the secretary or the Board of
17 Parole Hearings or both determine that a prisoner satisfies the
18 criteria set forth in paragraph (2), the secretary or the board may
19 recommend to the court that the prisoner's sentence be recalled.

20 (2) The court shall have the discretion to resentence or recall if
21 the court finds that the facts described in subparagraphs (A) and
22 (B) or subparagraphs (B) and (C) exist:

23 (A) The prisoner is terminally ill with an incurable condition
24 caused by an illness or disease that would produce death within
25 six months, as determined by a physician employed by the
26 department.

27 (B) The conditions under which the prisoner would be released
28 or receive treatment do not pose a threat to public safety.

29 (C) The prisoner is permanently medically incapacitated with
30 a medical condition that renders him or her permanently unable
31 to perform activities of basic daily living, and results in the prisoner
32 requiring 24-hour total care, including, but not limited to, coma,
33 persistent vegetative state, brain death, ventilator-dependency, loss
34 of control of muscular or neurological function, and that
35 incapacitation did not exist at the time of the original sentencing.

36 The Board of Parole Hearings shall make findings pursuant to
37 this subdivision before making a recommendation for resentence
38 or recall to the court. This subdivision does not apply to a prisoner
39 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by
2 the secretary or the board, the court shall hold a hearing to consider
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines
5 that a prisoner has six months or less to live shall notify the chief
6 medical officer of the prognosis. If the chief medical officer
7 concurs with the prognosis, he or she shall notify the warden.
8 Within 48 hours of receiving notification, the warden or the
9 warden's representative shall notify the prisoner of the recall and
10 resentencing procedures, and shall arrange for the prisoner to
11 designate a family member or other outside agent to be notified
12 as to the prisoner's medical condition and prognosis, and as to the
13 recall and resentencing procedures. If the inmate is deemed
14 mentally unfit, the warden or the warden's representative shall
15 contact the inmate's emergency contact and provide the information
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for recall and resentencing
26 by contacting the chief medical officer at the prison or the
27 secretary. Upon receipt of the request, the chief medical officer
28 and the warden or the warden's representative shall follow the
29 procedures described in paragraph (4). If the secretary determines
30 that the prisoner satisfies the criteria set forth in paragraph (2), the
31 secretary or board may recommend to the court that the prisoner's
32 sentence be recalled. The secretary shall submit a recommendation
33 for release within 30 days in the case of inmates sentenced to
34 determinate terms and, in the case of inmates sentenced to
35 indeterminate terms, the secretary shall make a recommendation
36 to the Board of Parole Hearings with respect to the inmates who
37 have applied under this section. The board shall consider this
38 information and make an independent judgment pursuant to
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by
4 the secretary or the Board of Parole Hearings shall include one or
5 more medical evaluations, a postrelease plan, and findings pursuant
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,
10 the prisoner shall be released by the department within 48 hours
11 of receipt of the court's order, unless a longer time period is agreed
12 to by the inmate. At the time of release, the warden or the warden's
13 representative shall ensure that the prisoner has each of the
14 following in his or her possession: a discharge medical summary,
15 full medical records, state identification, parole or postrelease
16 community supervision medications, and all property belonging
17 to the prisoner. After discharge, any additional records shall be
18 sent to the prisoner's forwarding address.

19 (10) The secretary shall issue a directive to medical and
20 correctional staff employed by the department that details the
21 guidelines and procedures for initiating a recall and resentencing
22 procedure. The directive shall clearly state that any prisoner who
23 is given a prognosis of six months or less to live is eligible for
24 recall and resentencing consideration, and that recall and
25 resentencing procedures shall be initiated upon that prognosis.

26 (11) The provisions of this subdivision shall be available to an
27 inmate who is sentenced to a county jail pursuant to subdivision
28 (h). For purposes of those inmates, "secretary" or "warden" shall
29 mean the county correctional administrator and "chief medical
30 officer" shall mean a physician designated by the county
31 correctional administrator for this purpose.

32 (f) Notwithstanding any other provision of this section, for
33 purposes of paragraph (3) of subdivision (h), any allegation that
34 a defendant is eligible for state prison due to a prior or current
35 conviction, sentence enhancement, or because he or she is required
36 to register as a sex offender shall not be subject to dismissal
37 pursuant to Section 1385.

38 (g) A sentence to state prison for a determinate term for which
39 only one term is specified, is a sentence to state prison under this
40 section.

1 (h) (1) Except as provided in paragraph (3), a felony punishable
2 pursuant to this subdivision where the term is not specified in the
3 underlying offense shall be punishable by a term of imprisonment
4 in a county jail for 16 months, or two or three years.

5 (2) Except as provided in paragraph (3), a felony punishable
6 pursuant to this subdivision shall be punishable by imprisonment
7 in a county jail for the term described in the underlying offense.

8 (3) Notwithstanding paragraphs (1) and (2), where the defendant
9 (A) has a prior or current felony conviction for a serious felony
10 described in subdivision (c) of Section 1192.7 or a prior or current
11 conviction for a violent felony described in subdivision (c) of
12 Section 667.5, (B) has a prior felony conviction in another
13 jurisdiction for an offense that has all the elements of a serious
14 felony described in subdivision (c) of Section 1192.7 or a violent
15 felony described in subdivision (c) of Section 667.5, (C) is required
16 to register as a sex offender pursuant to Chapter 5.5 (commencing
17 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
18 and as part of the sentence an enhancement pursuant to Section
19 186.11 is imposed, an executed sentence for a felony punishable
20 pursuant to this subdivision shall be served in state prison.

21 (4) Nothing in this subdivision shall be construed to prevent
22 other dispositions authorized by law, including pretrial diversion,
23 deferred entry of judgment, or an order granting probation pursuant
24 to Section 1203.1.

25 (5) (A) Unless the court finds that, in the interests of justice, it
26 is not appropriate in a particular case, the court, when imposing a
27 sentence pursuant to paragraph (1) or (2), shall suspend execution
28 of a concluding portion of the term for a period selected at the
29 court's discretion.

30 (B) The portion of a defendant's sentenced term that is
31 suspended pursuant to this paragraph shall be known as mandatory
32 supervision, and, unless otherwise ordered by the court, shall
33 commence upon release from physical custody or an alternative
34 custody program, whichever is later. During the period of
35 mandatory supervision, the defendant shall be supervised by the
36 county probation officer in accordance with the terms, conditions,
37 and procedures generally applicable to persons placed on probation,
38 for the remaining unserved portion of the sentence imposed by the
39 court. The period of supervision shall be mandatory, and may not
40 be earlier terminated except by court order. Any proceeding to

1 revoke or modify mandatory supervision under this subparagraph
2 shall be conducted pursuant to either subdivisions (a) and (b) of
3 Section 1203.2 or Section 1203.3. During the period when the
4 defendant is under that supervision, unless in actual custody related
5 to the sentence imposed by the court, the defendant shall be entitled
6 to only actual time credit against the term of imprisonment imposed
7 by the court. Any time period which is suspended because a person
8 has absconded shall not be credited toward the period of
9 supervision.

10 (6) The sentencing changes made by the act that added this
11 subdivision shall be applied prospectively to any person sentenced
12 on or after October 1, 2011.

13 (7) The sentencing changes made to paragraph (5) by the act
14 that added this paragraph shall become effective and operative on
15 January 1, 2015, and shall be applied prospectively to any person
16 sentenced on or after January 1, 2015.

17 (i) This section shall remain in effect only until January 1, 2017,
18 2022, and as of that date is repealed, unless a later enacted statute,
19 that is enacted before that date, January 1, 2022, deletes or extends
20 that date.

21 *SEC. 1.1. Section 1170 of the Penal Code, as amended by*
22 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*
23 *read:*

24 1170. (a) (1) The Legislature finds and declares that the
25 purpose of imprisonment for crime is punishment. ~~This sentencing~~
26 ~~is public safety achieved through punishment, rehabilitation, and~~
27 ~~restorative justice. When a sentence includes incarceration, this~~
28 ~~purpose is best served by terms that are proportionate to the~~
29 ~~seriousness of the offense with provision for uniformity in the~~
30 ~~sentences of offenders committing the same offense under similar~~
31 ~~circumstances. The Legislature further finds and declares that the~~
32 ~~elimination of disparity and the provision of uniformity of~~
33 ~~sentences can best be achieved by determinate sentences fixed by~~
34 ~~statute in proportion to the seriousness of the offense as determined~~
35 ~~by the Legislature to be imposed by the court with specified~~
36 ~~discretion.~~

37 (2) ~~Notwithstanding paragraph (1), the~~ The Legislature further
38 finds and declares that programs should be available for inmates,
39 including, but not limited to, ~~educational programs, educational,~~
40 ~~rehabilitative, and restorative justice programs~~ that are designed

1 *to promote behavior change and to prepare nonviolent felony all*
2 *eligible offenders for successful reentry into the community. The*
3 *Legislature encourages the development of policies and programs*
4 *designed to educate and rehabilitate nonviolent felony all eligible*
5 *offenders. In implementing this section, the Department of*
6 *Corrections and Rehabilitation is encouraged to give priority*
7 *enrollment in programs to allow all eligible inmates the opportunity*
8 *to enroll in programs that promote successful return to the*
9 *community to an inmate with a short remaining term of*
10 *commitment and a release date that would allow him or her*
11 *adequate time to complete the program. community. The*
12 *Department of Corrections and Rehabilitation is directed to*
13 *establish a mission statement consistent with these principles.*

14 (3) In any case in which the punishment sentence prescribed by
15 statute for a person convicted of a public offense is a term of
16 imprisonment in the state prison or a term pursuant to subdivision
17 (h) of any specification of three time periods, the court shall
18 sentence the defendant to one of the terms of imprisonment
19 specified unless the convicted person is given any other disposition
20 provided by law, including a fine, jail, probation, or the suspension
21 of imposition or execution of sentence or is sentenced pursuant to
22 subdivision (b) of Section 1168 because he or she had committed
23 his or her crime prior to July 1, 1977. In sentencing the convicted
24 person, the court shall apply the sentencing rules of the Judicial
25 Council. The court, unless it determines that there are
26 circumstances in mitigation of the punishment sentence prescribed,
27 shall also impose any other term that it is required by law to impose
28 as an additional term. Nothing in this article shall affect any
29 provision of law that imposes the death penalty, that authorizes or
30 restricts the granting of probation or suspending the execution or
31 imposition of sentence, or expressly provides for imprisonment in
32 the state prison for life, except as provided in paragraph (2) of
33 subdivision (d). In any case in which the amount of
34 preimprisonment credit under Section 2900.5 or any other law is
35 equal to or exceeds any sentence imposed pursuant to this chapter,
36 except for the remaining portion of mandatory supervision pursuant
37 to subparagraph (B) of paragraph (5) of subdivision (h), the entire
38 sentence shall be deemed to have been served, except for the
39 remaining period of mandatory supervision, and the defendant
40 shall not be actually delivered to the custody of the secretary or to

1 the custody of the county correctional administrator. The court
2 shall advise the defendant that he or she shall serve an applicable
3 period of parole, postrelease community supervision, or mandatory
4 supervision, and order the defendant to report to the parole or
5 probation office closest to the defendant's last legal residence,
6 unless the in-custody credits equal the total sentence, including
7 both confinement time and the period of parole, postrelease
8 community supervision, or mandatory supervision. The sentence
9 shall be deemed a separate prior prison term or a sentence of
10 imprisonment in a county jail under subdivision (h) for purposes
11 of Section 667.5, and a copy of the judgment and other necessary
12 documentation shall be forwarded to the secretary.

13 (b) When a judgment of imprisonment is to be imposed and the
14 statute specifies three possible terms, the choice of the appropriate
15 term shall rest within the sound discretion of the court. At least
16 four days prior to the time set for imposition of judgment, either
17 party or the victim, or the family of the victim if the victim is
18 deceased, may submit a statement in aggravation or mitigation. In
19 determining the appropriate term, the court may consider the record
20 in the case, the probation officer's report, other reports, including
21 reports received pursuant to Section 1203.03, and statements in
22 aggravation or mitigation submitted by the prosecution, the
23 defendant, or the victim, or the family of the victim if the victim
24 is deceased, and any further evidence introduced at the sentencing
25 hearing. The court shall select the term which, in the court's
26 discretion, best serves the interests of justice. The court shall set
27 forth on the record the reasons for imposing the term selected and
28 the court may not impose an upper term by using the fact of any
29 enhancement upon which sentence is imposed under any provision
30 of law. A term of imprisonment shall not be specified if imposition
31 of sentence is suspended.

32 (c) The court shall state the reasons for its sentence choice on
33 the record at the time of sentencing. The court shall also inform
34 the defendant that as part of the sentence after expiration of the
35 term he or she may be on parole for a period as provided in Section
36 3000 or 3000.08 or postrelease community supervision for a period
37 as provided in Section 3451.

38 (d) (1) When a defendant subject to this section or subdivision
39 (b) of Section 1168 has been sentenced to be imprisoned in the
40 state prison or county jail pursuant to subdivision (h) and has been

1 committed to the custody of the secretary or the county correctional
2 administrator, the court may, within 120 days of the date of
3 commitment on its own motion, or at any time upon the
4 recommendation of the secretary or the Board of Parole Hearings
5 in the case of state prison inmates, or the county correctional
6 administrator in the case of county jail inmates, recall the sentence
7 and commitment previously ordered and resentence the defendant
8 in the same manner as if he or she had not previously been
9 sentenced, provided the new sentence, if any, is no greater than
10 the initial sentence. The court resentencing under this subdivision
11 shall apply the sentencing rules of the Judicial Council so as to
12 eliminate disparity of sentences and to promote uniformity of
13 sentencing. Credit shall be given for time served.

14 (2) (A) (i) When a defendant who was under 18 years of age
15 at the time of the commission of the offense for which the
16 defendant was sentenced to imprisonment for life without the
17 possibility of parole has ~~served~~ *been incarcerated for* at least 15
18 ~~years of that sentence, years,~~ the defendant may submit to the
19 sentencing court a petition for recall and resentencing.

20 (ii) Notwithstanding clause (i), this paragraph shall not apply
21 to defendants sentenced to life without parole for an offense where
22 *it was pled and proved that* the defendant tortured, as described
23 in Section 206, his or her victim or the victim was a public safety
24 official, including any law enforcement personnel mentioned in
25 Chapter 4.5 (commencing with Section 830) of Title 3, or any
26 firefighter as described in Section 245.1, as well as any other officer
27 in any segment of law enforcement who is employed by the federal
28 government, the state, or any of its political subdivisions.

29 (B) The defendant shall file the original petition with the
30 sentencing court. A copy of the petition shall be served on the
31 agency that prosecuted the case. The petition shall include the
32 defendant's statement that he or she was under 18 years of age at
33 the time of the crime and was sentenced to life in prison without
34 the possibility of parole, the defendant's statement describing his
35 or her remorse and work towards rehabilitation, and the defendant's
36 statement that one of the following is true:

37 (i) The defendant was convicted pursuant to felony murder or
38 aiding and abetting murder provisions of law.

39 (ii) The defendant does not have juvenile felony adjudications
40 for assault or other felony crimes with a significant potential for

1 personal harm to victims prior to the offense for which the sentence
2 is being considered for recall.

3 (iii) The defendant committed the offense with at least one adult
4 codefendant.

5 (iv) The defendant has performed acts that tend to indicate
6 rehabilitation or the potential for rehabilitation, including, but not
7 limited to, availing himself or herself of rehabilitative, educational,
8 or vocational programs, if those programs have been available at
9 his or her classification level and facility, using self-study for
10 self-improvement, or showing evidence of remorse.

11 (C) If any of the information required in subparagraph (B) is
12 missing from the petition, or if proof of service on the prosecuting
13 agency is not provided, the court shall return the petition to the
14 defendant and advise the defendant that the matter cannot be
15 considered without the missing information.

16 (D) A reply to the petition, if any, shall be filed with the court
17 within 60 days of the date on which the prosecuting agency was
18 served with the petition, unless a continuance is granted for good
19 cause.

20 (E) If the court finds by a preponderance of the evidence that
21 ~~one or more of the statements in the petition are true, the court~~
22 ~~shall hold a hearing to consider whether to~~ *specified in clauses (i)*
23 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*
24 *the sentence and commitment previously ordered and hold a*
25 *hearing to resentence the defendant in the same manner as if the*
26 *defendant had not previously been sentenced, provided that the*
27 *new sentence, if any, is not greater than the initial sentence.*
28 *Victims, or victim family members if the victim is deceased, shall*
29 *retain the rights to participate in the hearing.*

30 (F) The factors that the court may consider when determining
31 whether to ~~recall and~~ *resentence the defendant to a term of*
32 *imprisonment with the possibility of parole* include, but are not
33 limited to, the following:

34 (i) The defendant was convicted pursuant to felony murder or
35 aiding and abetting murder provisions of law.

36 (ii) The defendant does not have juvenile felony adjudications
37 for assault or other felony crimes with a significant potential for
38 personal harm to victims prior to the offense for which the ~~sentence~~
39 ~~is being considered for recall.~~ *defendant was sentenced to life*
40 *without the possibility of parole.*

1 (iii) The defendant committed the offense with at least one adult
2 codefendant.

3 (iv) Prior to the offense for which the ~~sentence is being~~
4 ~~considered for recall~~, *defendant was sentenced to life without the*
5 *possibility of parole*, the defendant had insufficient adult support
6 or supervision and had suffered from psychological or physical
7 trauma, or significant stress.

8 (v) The defendant suffers from cognitive limitations due to
9 mental illness, developmental disabilities, or other factors that did
10 not constitute a defense, but influenced the defendant's
11 involvement in the offense.

12 (vi) The defendant has performed acts that tend to indicate
13 rehabilitation or the potential for rehabilitation, including, but not
14 limited to, availing himself or herself of rehabilitative, educational,
15 or vocational programs, if those programs have been available at
16 his or her classification level and facility, using self-study for
17 self-improvement, or showing evidence of remorse.

18 (vii) The defendant has maintained family ties or connections
19 with others through letter writing, calls, or visits, or has eliminated
20 contact with individuals outside of prison who are currently
21 involved with crime.

22 (viii) The defendant has had no disciplinary actions for violent
23 activities in the last five years in which the defendant was
24 determined to be the aggressor.

25 (G) The court shall have the discretion to ~~recall the sentence~~
26 ~~and commitment previously ordered~~ and to resentence the
27 defendant in the same manner as if the defendant had not
28 previously been sentenced, provided that the new sentence, if any,
29 is not greater than the initial sentence. The discretion of the court
30 shall be exercised in consideration of the criteria in subparagraph
31 ~~(B)~~. (F). Victims, or victim family members if the victim is
32 deceased, shall be notified of the resentencing hearing and shall
33 retain their rights to participate in the hearing.

34 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*
35 *resentenced to imprisonment for life without the possibility of*
36 *parole*, the defendant may submit another petition for recall and
37 resentencing to the sentencing court when the defendant has been
38 committed to the custody of the department for at least 20 years.
39 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*
40 *or the defendant is resentenced to imprisonment for life without*

1 *the possibility of parole* under that petition, the defendant may file
2 another petition after having served 24 years. The final petition
3 may be submitted, and the response to that petition shall be
4 determined, during the 25th year of the defendant's sentence.

5 (I) In addition to the criteria in subparagraph (F), the court may
6 consider any other criteria that the court deems relevant to its
7 decision, so long as the court identifies them on the record,
8 provides a statement of reasons for adopting them, and states why
9 the defendant does or does not satisfy the criteria.

10 (J) This subdivision shall have retroactive application.

11 (K) *Nothing in this paragraph is intended to diminish or*
12 *abrogate any rights or remedies otherwise available to the*
13 *defendant.*

14 (e) (1) Notwithstanding any other law and consistent with
15 paragraph (1) of subdivision (a), if the secretary or the Board of
16 Parole Hearings or both determine that a prisoner satisfies the
17 criteria set forth in paragraph (2), the secretary or the board may
18 recommend to the court that the prisoner's sentence be recalled.

19 (2) The court shall have the discretion to resentence or recall if
20 the court finds that the facts described in subparagraphs (A) and
21 (B) or subparagraphs (B) and (C) exist:

22 (A) The prisoner is terminally ill with an incurable condition
23 caused by an illness or disease that would produce death within
24 six months, as determined by a physician employed by the
25 department.

26 (B) The conditions under which the prisoner would be released
27 or receive treatment do not pose a threat to public safety.

28 (C) The prisoner is permanently medically incapacitated with
29 a medical condition that renders him or her permanently unable
30 to perform activities of basic daily living, and results in the prisoner
31 requiring 24-hour total care, including, but not limited to, coma,
32 persistent vegetative state, brain death, ventilator-dependency, loss
33 of control of muscular or neurological function, and that
34 incapacitation did not exist at the time of the original sentencing.

35 The Board of Parole Hearings shall make findings pursuant to
36 this subdivision before making a recommendation for resentence
37 or recall to the court. This subdivision does not apply to a prisoner
38 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by
2 the secretary or the board, the court shall hold a hearing to consider
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines
5 that a prisoner has six months or less to live shall notify the chief
6 medical officer of the prognosis. If the chief medical officer
7 concurs with the prognosis, he or she shall notify the warden.
8 Within 48 hours of receiving notification, the warden or the
9 warden's representative shall notify the prisoner of the recall and
10 resentencing procedures, and shall arrange for the prisoner to
11 designate a family member or other outside agent to be notified
12 as to the prisoner's medical condition and prognosis, and as to the
13 recall and resentencing procedures. If the inmate is deemed
14 mentally unfit, the warden or the warden's representative shall
15 contact the inmate's emergency contact and provide the information
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for recall and resentencing
26 by contacting the chief medical officer at the prison or the
27 secretary. Upon receipt of the request, the chief medical officer
28 and the warden or the warden's representative shall follow the
29 procedures described in paragraph (4). If the secretary determines
30 that the prisoner satisfies the criteria set forth in paragraph (2), the
31 secretary or board may recommend to the court that the prisoner's
32 sentence be recalled. The secretary shall submit a recommendation
33 for release within 30 days in the case of inmates sentenced to
34 determinate terms and, in the case of inmates sentenced to
35 indeterminate terms, the secretary shall make a recommendation
36 to the Board of Parole Hearings with respect to the inmates who
37 have applied under this section. The board shall consider this
38 information and make an independent judgment pursuant to
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by
4 the secretary or the Board of Parole Hearings shall include one or
5 more medical evaluations, a postrelease plan, and findings pursuant
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,
10 the prisoner shall be released by the department within 48 hours
11 of receipt of the court's order, unless a longer time period is agreed
12 to by the inmate. At the time of release, the warden or the warden's
13 representative shall ensure that the prisoner has each of the
14 following in his or her possession: a discharge medical summary,
15 full medical records, state identification, parole or postrelease
16 community supervision medications, and all property belonging
17 to the prisoner. After discharge, any additional records shall be
18 sent to the prisoner's forwarding address.

19 (10) The secretary shall issue a directive to medical and
20 correctional staff employed by the department that details the
21 guidelines and procedures for initiating a recall and resentencing
22 procedure. The directive shall clearly state that any prisoner who
23 is given a prognosis of six months or less to live is eligible for
24 recall and resentencing consideration, and that recall and
25 resentencing procedures shall be initiated upon that prognosis.

26 (11) The provisions of this subdivision shall be available to an
27 inmate who is sentenced to a county jail pursuant to subdivision
28 (h). For purposes of those inmates, "secretary" or "warden" shall
29 mean the county correctional administrator and "chief medical
30 officer" shall mean a physician designated by the county
31 correctional administrator for this purpose.

32 (f) Notwithstanding any other provision of this section, for
33 purposes of paragraph (3) of subdivision (h), any allegation that
34 a defendant is eligible for state prison due to a prior or current
35 conviction, sentence enhancement, or because he or she is required
36 to register as a sex offender shall not be subject to dismissal
37 pursuant to Section 1385.

38 (g) A sentence to state prison for a determinate term for which
39 only one term is specified, is a sentence to state prison under this
40 section.

1 (h) (1) Except as provided in paragraph (3), a felony punishable
2 pursuant to this subdivision where the term is not specified in the
3 underlying offense shall be punishable by a term of imprisonment
4 in a county jail for 16 months, or two or three years.

5 (2) Except as provided in paragraph (3), a felony punishable
6 pursuant to this subdivision shall be punishable by imprisonment
7 in a county jail for the term described in the underlying offense.

8 (3) Notwithstanding paragraphs (1) and (2), where the defendant
9 (A) has a prior or current felony conviction for a serious felony
10 described in subdivision (c) of Section 1192.7 or a prior or current
11 conviction for a violent felony described in subdivision (c) of
12 Section 667.5, (B) has a prior felony conviction in another
13 jurisdiction for an offense that has all the elements of a serious
14 felony described in subdivision (c) of Section 1192.7 or a violent
15 felony described in subdivision (c) of Section 667.5, (C) is required
16 to register as a sex offender pursuant to Chapter 5.5 (commencing
17 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
18 and as part of the sentence an enhancement pursuant to Section
19 186.11 is imposed, an executed sentence for a felony punishable
20 pursuant to this subdivision shall be served in state prison.

21 (4) Nothing in this subdivision shall be construed to prevent
22 other dispositions authorized by law, including pretrial diversion,
23 deferred entry of judgment, or an order granting probation pursuant
24 to Section 1203.1.

25 (5) (A) Unless the court finds that, in the interests of justice, it
26 is not appropriate in a particular case, the court, when imposing a
27 sentence pursuant to paragraph (1) or (2), shall suspend execution
28 of a concluding portion of the term for a period selected at the
29 court's discretion.

30 (B) The portion of a defendant's sentenced term that is
31 suspended pursuant to this paragraph shall be known as mandatory
32 supervision, and, unless otherwise ordered by the court, shall
33 commence upon release from physical custody or an alternative
34 custody program, whichever is later. During the period of
35 mandatory supervision, the defendant shall be supervised by the
36 county probation officer in accordance with the terms, conditions,
37 and procedures generally applicable to persons placed on probation,
38 for the remaining unserved portion of the sentence imposed by the
39 court. The period of supervision shall be mandatory, and may not
40 be earlier terminated except by court order. Any proceeding to

1 revoke or modify mandatory supervision under this subparagraph
2 shall be conducted pursuant to either subdivisions (a) and (b) of
3 Section 1203.2 or Section 1203.3. During the period when the
4 defendant is under that supervision, unless in actual custody related
5 to the sentence imposed by the court, the defendant shall be entitled
6 to only actual time credit against the term of imprisonment imposed
7 by the court. Any time period which is suspended because a person
8 has absconded shall not be credited toward the period of
9 supervision.

10 (6) The sentencing changes made by the act that added this
11 subdivision shall be applied prospectively to any person sentenced
12 on or after October 1, 2011.

13 (7) The sentencing changes made to paragraph (5) by the act
14 that added this paragraph shall become effective and operative on
15 January 1, 2015, and shall be applied prospectively to any person
16 sentenced on or after January 1, 2015.

17 (i) This section shall remain in effect only until January 1, ~~2017~~,
18 2022, and as of that date is repealed, unless a later enacted statute,
19 that is enacted before ~~that date~~, *January 1, 2022*, deletes or extends
20 that date.

21 SEC. 2. Section 1170 of the Penal Code, as amended by Section
22 2 of Chapter 378 of the Statutes of 2015, is amended to read:

23 1170. (a) (1) The Legislature finds and declares that the
24 purpose of imprisonment for crime is punishment. This purpose
25 is best served by terms proportionate to the seriousness of the
26 offense with provision for uniformity in the sentences of offenders
27 committing the same offense under similar circumstances. The
28 Legislature further finds and declares that the elimination of
29 disparity and the provision of uniformity of sentences can best be
30 achieved by determinate sentences fixed by statute in proportion
31 to the seriousness of the offense as determined by the Legislature
32 to be imposed by the court with specified discretion.

33 (2) Notwithstanding paragraph (1), the Legislature further finds
34 and declares that programs should be available for inmates,
35 including, but not limited to, educational programs, that are
36 designed to prepare nonviolent felony offenders for successful
37 reentry into the community. The Legislature encourages the
38 development of policies and programs designed to educate and
39 rehabilitate nonviolent felony offenders. In implementing this
40 section, the Department of Corrections and Rehabilitation is

1 encouraged to give priority enrollment in programs to promote
2 successful return to the community to an inmate with a short
3 remaining term of commitment and a release date that would allow
4 him or her adequate time to complete the program.

5 (3) In any case in which the punishment prescribed by statute
6 for a person convicted of a public offense is a term of imprisonment
7 in the state prison, or a term pursuant to subdivision (h), of any
8 specification of three time periods, the court shall sentence the
9 defendant to one of the terms of imprisonment specified unless
10 the convicted person is given any other disposition provided by
11 law, including a fine, jail, probation, or the suspension of
12 imposition or execution of sentence or is sentenced pursuant to
13 subdivision (b) of Section 1168 because he or she had committed
14 his or her crime prior to July 1, 1977. In sentencing the convicted
15 person, the court shall apply the sentencing rules of the Judicial
16 Council. The court, unless it determines that there are
17 circumstances in mitigation of the punishment prescribed, shall
18 also impose any other term that it is required by law to impose as
19 an additional term. Nothing in this article shall affect any provision
20 of law that imposes the death penalty, that authorizes or restricts
21 the granting of probation or suspending the execution or imposition
22 of sentence, or expressly provides for imprisonment in the state
23 prison for life, except as provided in paragraph (2) of subdivision
24 (d). In any case in which the amount of preimprisonment credit
25 under Section 2900.5 or any other provision of law is equal to or
26 exceeds any sentence imposed pursuant to this chapter, except for
27 a remaining portion of mandatory supervision imposed pursuant
28 to subparagraph (B) of paragraph (5) of subdivision (h), the entire
29 sentence shall be deemed to have been served, except for the
30 remaining period of mandatory supervision, and the defendant
31 shall not be actually delivered to the custody of the secretary or
32 the county correctional administrator. The court shall advise the
33 defendant that he or she shall serve an applicable period of parole,
34 postrelease community supervision, or mandatory supervision and
35 order the defendant to report to the parole or probation office
36 closest to the defendant's last legal residence, unless the in-custody
37 credits equal the total sentence, including both confinement time
38 and the period of parole, postrelease community supervision, or
39 mandatory supervision. The sentence shall be deemed a separate
40 prior prison term or a sentence of imprisonment in a county jail

1 under subdivision (h) for purposes of Section 667.5, and a copy
2 of the judgment and other necessary documentation shall be
3 forwarded to the secretary.

4 (b) When a judgment of imprisonment is to be imposed and the
5 statute specifies three possible terms, the court shall order
6 imposition of the middle term, unless there are circumstances in
7 aggravation or mitigation of the crime. At least four days prior to
8 the time set for imposition of judgment, either party or the victim,
9 or the family of the victim if the victim is deceased, may submit
10 a statement in aggravation or mitigation to dispute facts in the
11 record or the probation officer's report, or to present additional
12 facts. In determining whether there are circumstances that justify
13 imposition of the upper or lower term, the court may consider the
14 record in the case, the probation officer's report, other reports,
15 including reports received pursuant to Section 1203.03, and
16 statements in aggravation or mitigation submitted by the
17 prosecution, the defendant, or the victim, or the family of the victim
18 if the victim is deceased, and any further evidence introduced at
19 the sentencing hearing. The court shall set forth on the record the
20 facts and reasons for imposing the upper or lower term. The court
21 may not impose an upper term by using the fact of any
22 enhancement upon which sentence is imposed under any provision
23 of law. A term of imprisonment shall not be specified if imposition
24 of sentence is suspended.

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in Section
29 3000 or 3000.08 or postrelease community supervision for a period
30 as provided in Section 3451.

31 (d) (1) When a defendant subject to this section or subdivision
32 (b) of Section 1168 has been sentenced to be imprisoned in the
33 state prison or county jail pursuant to subdivision (h) and has been
34 committed to the custody of the secretary or the county correctional
35 administrator, the court may, within 120 days of the date of
36 commitment on its own motion, or at any time upon the
37 recommendation of the secretary or the Board of Parole Hearings
38 in the case of state prison inmates, or the county correctional
39 administrator in the case of county jail inmates, recall the sentence
40 and commitment previously ordered and resentence the defendant

1 in the same manner as if he or she had not previously been
2 sentenced, provided the new sentence, if any, is no greater than
3 the initial sentence. The court resentencing under this subdivision
4 shall apply the sentencing rules of the Judicial Council so as to
5 eliminate disparity of sentences and to promote uniformity of
6 sentencing. Credit shall be given for time served.

7 (2) (A) (i) When a defendant who was under 18 years of age
8 at the time of the commission of the offense for which the
9 defendant was sentenced to imprisonment for life without the
10 possibility of parole has been incarcerated for at least 15 years,
11 the defendant may submit to the sentencing court a petition for
12 recall and resentencing.

13 (ii) Notwithstanding clause (i), this paragraph shall not apply
14 to defendants sentenced to life without parole for an offense where
15 it was pled and proved that the defendant tortured, as described in
16 Section 206, his or her victim or the victim was a public safety
17 official, including any law enforcement personnel mentioned in
18 Chapter 4.5 (commencing with Section 830) of Title 3, or any
19 firefighter as described in Section 245.1, as well as any other officer
20 in any segment of law enforcement who is employed by the federal
21 government, the state, or any of its political subdivisions.

22 (B) The defendant shall file the original petition with the
23 sentencing court. A copy of the petition shall be served on the
24 agency that prosecuted the case. The petition shall include the
25 defendant's statement that he or she was under 18 years of age at
26 the time of the crime and was sentenced to life in prison without
27 the possibility of parole, the defendant's statement describing his
28 or her remorse and work towards rehabilitation, and the defendant's
29 statement that one of the following is true:

30 (i) The defendant was convicted pursuant to felony murder or
31 aiding and abetting murder provisions of law.

32 (ii) The defendant does not have juvenile felony adjudications
33 for assault or other felony crimes with a significant potential for
34 personal harm to victims prior to the offense for which the sentence
35 is being considered for recall.

36 (iii) The defendant committed the offense with at least one adult
37 codefendant.

38 (iv) The defendant has performed acts that tend to indicate
39 rehabilitation or the potential for rehabilitation, including, but not
40 limited to, availing himself or herself of rehabilitative, educational,

1 or vocational programs, if those programs have been available at
2 his or her classification level and facility, using self-study for
3 self-improvement, or showing evidence of remorse.

4 (C) If any of the information required in subparagraph (B) is
5 missing from the petition, or if proof of service on the prosecuting
6 agency is not provided, the court shall return the petition to the
7 defendant and advise the defendant that the matter cannot be
8 considered without the missing information.

9 (D) A reply to the petition, if any, shall be filed with the court
10 within 60 days of the date on which the prosecuting agency was
11 served with the petition, unless a continuance is granted for good
12 cause.

13 (E) If the court finds by a preponderance of the evidence that
14 one or more of the statements specified in clauses (i) to (iv),
15 inclusive, of subparagraph (B) is true, the court shall recall the
16 sentence and commitment previously ordered and hold a hearing
17 to resentence the defendant in the same manner as if the defendant
18 had not previously been sentenced, provided that the new sentence,
19 if any, is not greater than the initial sentence. Victims, or victim
20 family members if the victim is deceased, shall retain the rights to
21 participate in the hearing.

22 (F) The factors that the court may consider when determining
23 whether to resentence the defendant to a term of imprisonment
24 with the possibility of parole include, but are not limited to, the
25 following:

26 (i) The defendant was convicted pursuant to felony murder or
27 aiding and abetting murder provisions of law.

28 (ii) The defendant does not have juvenile felony adjudications
29 for assault or other felony crimes with a significant potential for
30 personal harm to victims prior to the offense for which the
31 defendant was sentenced to life without the possibility of parole.

32 (iii) The defendant committed the offense with at least one adult
33 codefendant.

34 (iv) Prior to the offense for which the defendant was sentenced
35 to life without the possibility of parole, the defendant had
36 insufficient adult support or supervision and had suffered from
37 psychological or physical trauma, or significant stress.

38 (v) The defendant suffers from cognitive limitations due to
39 mental illness, developmental disabilities, or other factors that did

1 not constitute a defense, but influenced the defendant's
2 involvement in the offense.

3 (vi) The defendant has performed acts that tend to indicate
4 rehabilitation or the potential for rehabilitation, including, but not
5 limited to, availing himself or herself of rehabilitative, educational,
6 or vocational programs, if those programs have been available at
7 his or her classification level and facility, using self-study for
8 self-improvement, or showing evidence of remorse.

9 (vii) The defendant has maintained family ties or connections
10 with others through letter writing, calls, or visits, or has eliminated
11 contact with individuals outside of prison who are currently
12 involved with crime.

13 (viii) The defendant has had no disciplinary actions for violent
14 activities in the last five years in which the defendant was
15 determined to be the aggressor.

16 (G) The court shall have the discretion to resentence the
17 defendant in the same manner as if the defendant had not
18 previously been sentenced, provided that the new sentence, if any,
19 is not greater than the initial sentence. The discretion of the court
20 shall be exercised in consideration of the criteria in subparagraph
21 (F). Victims, or victim family members if the victim is deceased,
22 shall be notified of the resentencing hearing and shall retain their
23 rights to participate in the hearing.

24 (H) If the sentence is not recalled or the defendant is resentenced
25 to imprisonment for life without the possibility of parole, the
26 defendant may submit another petition for recall and resentencing
27 to the sentencing court when the defendant has been committed
28 to the custody of the department for at least 20 years. If the
29 sentence is not recalled or the defendant is resentenced to
30 imprisonment for life without the possibility of parole under that
31 petition, the defendant may file another petition after having served
32 24 years. The final petition may be submitted, and the response to
33 that petition shall be determined, during the 25th year of the
34 defendant's sentence.

35 (I) In addition to the criteria in subparagraph (F), the court may
36 consider any other criteria that the court deems relevant to its
37 decision, so long as the court identifies them on the record,
38 provides a statement of reasons for adopting them, and states why
39 the defendant does or does not satisfy the criteria.

40 (J) This subdivision shall have retroactive application.

1 (K) Nothing in this paragraph is intended to diminish or abrogate
2 any rights or remedies otherwise available to the defendant.

3 (e) (1) Notwithstanding any other law and consistent with
4 paragraph (1) of subdivision (a), if the secretary or the Board of
5 Parole Hearings or both determine that a prisoner satisfies the
6 criteria set forth in paragraph (2), the secretary or the board may
7 recommend to the court that the prisoner's sentence be recalled.

8 (2) The court shall have the discretion to resentence or recall if
9 the court finds that the facts described in subparagraphs (A) and
10 (B) or subparagraphs (B) and (C) exist:

11 (A) The prisoner is terminally ill with an incurable condition
12 caused by an illness or disease that would produce death within
13 six months, as determined by a physician employed by the
14 department.

15 (B) The conditions under which the prisoner would be released
16 or receive treatment do not pose a threat to public safety.

17 (C) The prisoner is permanently medically incapacitated with
18 a medical condition that renders him or her permanently unable
19 to perform activities of basic daily living, and results in the prisoner
20 requiring 24-hour total care, including, but not limited to, coma,
21 persistent vegetative state, brain death, ventilator-dependency, loss
22 of control of muscular or neurological function, and that
23 incapacitation did not exist at the time of the original sentencing.

24 The Board of Parole Hearings shall make findings pursuant to
25 this subdivision before making a recommendation for resentence
26 or recall to the court. This subdivision does not apply to a prisoner
27 sentenced to death or a term of life without the possibility of parole.

28 (3) Within 10 days of receipt of a positive recommendation by
29 the secretary or the board, the court shall hold a hearing to consider
30 whether the prisoner's sentence should be recalled.

31 (4) Any physician employed by the department who determines
32 that a prisoner has six months or less to live shall notify the chief
33 medical officer of the prognosis. If the chief medical officer
34 concurs with the prognosis, he or she shall notify the warden.
35 Within 48 hours of receiving notification, the warden or the
36 warden's representative shall notify the prisoner of the recall and
37 resentencing procedures, and shall arrange for the prisoner to
38 designate a family member or other outside agent to be notified
39 as to the prisoner's medical condition and prognosis, and as to the
40 recall and resentencing procedures. If the inmate is deemed

1 mentally unfit, the warden or the warden's representative shall
2 contact the inmate's emergency contact and provide the information
3 described in paragraph (2).

4 (5) The warden or the warden's representative shall provide the
5 prisoner and his or her family member, agent, or emergency
6 contact, as described in paragraph (4), updated information
7 throughout the recall and resentencing process with regard to the
8 prisoner's medical condition and the status of the prisoner's recall
9 and resentencing proceedings.

10 (6) Notwithstanding any other provisions of this section, the
11 prisoner or his or her family member or designee may
12 independently request consideration for recall and resentencing
13 by contacting the chief medical officer at the prison or the
14 secretary. Upon receipt of the request, the chief medical officer
15 and the warden or the warden's representative shall follow the
16 procedures described in paragraph (4). If the secretary determines
17 that the prisoner satisfies the criteria set forth in paragraph (2), the
18 secretary or board may recommend to the court that the prisoner's
19 sentence be recalled. The secretary shall submit a recommendation
20 for release within 30 days in the case of inmates sentenced to
21 determinate terms and, in the case of inmates sentenced to
22 indeterminate terms, the secretary shall make a recommendation
23 to the Board of Parole Hearings with respect to the inmates who
24 have applied under this section. The board shall consider this
25 information and make an independent judgment pursuant to
26 paragraph (2) and make findings related thereto before rejecting
27 the request or making a recommendation to the court. This action
28 shall be taken at the next lawfully noticed board meeting.

29 (7) Any recommendation for recall submitted to the court by
30 the secretary or the Board of Parole Hearings shall include one or
31 more medical evaluations, a postrelease plan, and findings pursuant
32 to paragraph (2).

33 (8) If possible, the matter shall be heard before the same judge
34 of the court who sentenced the prisoner.

35 (9) If the court grants the recall and resentencing application,
36 the prisoner shall be released by the department within 48 hours
37 of receipt of the court's order, unless a longer time period is agreed
38 to by the inmate. At the time of release, the warden or the warden's
39 representative shall ensure that the prisoner has each of the
40 following in his or her possession: a discharge medical summary,

1 full medical records, state identification, parole or postrelease
2 community supervision medications, and all property belonging
3 to the prisoner. After discharge, any additional records shall be
4 sent to the prisoner's forwarding address.

5 (10) The secretary shall issue a directive to medical and
6 correctional staff employed by the department that details the
7 guidelines and procedures for initiating a recall and resentencing
8 procedure. The directive shall clearly state that any prisoner who
9 is given a prognosis of six months or less to live is eligible for
10 recall and resentencing consideration, and that recall and
11 resentencing procedures shall be initiated upon that prognosis.

12 (11) The provisions of this subdivision shall be available to an
13 inmate who is sentenced to a county jail pursuant to subdivision
14 (h). For purposes of those inmates, "secretary" or "warden" shall
15 mean the county correctional administrator and "chief medical
16 officer" shall mean a physician designated by the county
17 correctional administrator for this purpose.

18 (f) Notwithstanding any other provision of this section, for
19 purposes of paragraph (3) of subdivision (h), any allegation that
20 a defendant is eligible for state prison due to a prior or current
21 conviction, sentence enhancement, or because he or she is required
22 to register as a sex offender shall not be subject to dismissal
23 pursuant to Section 1385.

24 (g) A sentence to state prison for a determinate term for which
25 only one term is specified, is a sentence to state prison under this
26 section.

27 (h) (1) Except as provided in paragraph (3), a felony punishable
28 pursuant to this subdivision where the term is not specified in the
29 underlying offense shall be punishable by a term of imprisonment
30 in a county jail for 16 months, or two or three years.

31 (2) Except as provided in paragraph (3), a felony punishable
32 pursuant to this subdivision shall be punishable by imprisonment
33 in a county jail for the term described in the underlying offense.

34 (3) Notwithstanding paragraphs (1) and (2), where the defendant
35 (A) has a prior or current felony conviction for a serious felony
36 described in subdivision (c) of Section 1192.7 or a prior or current
37 conviction for a violent felony described in subdivision (c) of
38 Section 667.5, (B) has a prior felony conviction in another
39 jurisdiction for an offense that has all the elements of a serious
40 felony described in subdivision (c) of Section 1192.7 or a violent

1 felony described in subdivision (c) of Section 667.5, (C) is required
2 to register as a sex offender pursuant to Chapter 5.5 (commencing
3 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
4 and as part of the sentence an enhancement pursuant to Section
5 186.11 is imposed, an executed sentence for a felony punishable
6 pursuant to this subdivision shall be served in state prison.

7 (4) Nothing in this subdivision shall be construed to prevent
8 other dispositions authorized by law, including pretrial diversion,
9 deferred entry of judgment, or an order granting probation pursuant
10 to Section 1203.1.

11 (5) (A) Unless the court finds, in the interest of justice, that it
12 is not appropriate in a particular case, the court, when imposing a
13 sentence pursuant to paragraph (1) or (2), shall suspend execution
14 of a concluding portion of the term for a period selected at the
15 court's discretion.

16 (B) The portion of a defendant's sentenced term that is
17 suspended pursuant to this paragraph shall be known as mandatory
18 supervision, and, unless otherwise ordered by the court, shall
19 commence upon release from physical custody or an alternative
20 custody program, whichever is later. During the period of
21 mandatory supervision, the defendant shall be supervised by the
22 county probation officer in accordance with the terms, conditions,
23 and procedures generally applicable to persons placed on probation,
24 for the remaining unserved portion of the sentence imposed by the
25 court. The period of supervision shall be mandatory, and may not
26 be earlier terminated except by court order. Any proceeding to
27 revoke or modify mandatory supervision under this subparagraph
28 shall be conducted pursuant to either subdivisions (a) and (b) of
29 Section 1203.2 or Section 1203.3. During the period when the
30 defendant is under that supervision, unless in actual custody related
31 to the sentence imposed by the court, the defendant shall be entitled
32 to only actual time credit against the term of imprisonment imposed
33 by the court. Any time period which is suspended because a person
34 has absconded shall not be credited toward the period of
35 supervision.

36 (6) The sentencing changes made by the act that added this
37 subdivision shall be applied prospectively to any person sentenced
38 on or after October 1, 2011.

39 (7) The sentencing changes made to paragraph (5) by the act
40 that added this paragraph shall become effective and operative on

1 January 1, 2015, and shall be applied prospectively to any person
2 sentenced on or after January 1, 2015.

3 (i) This section shall become operative on January 1, ~~2017~~.
4 ~~2022~~.

5 *SEC. 2.1. Section 1170 of the Penal Code, as amended by*
6 *Section 2 of Chapter 378 of the Statutes of 2015, is amended to*
7 *read:*

8 1170. (a) (1) The Legislature finds and declares that the
9 purpose of imprisonment for crime is punishment. ~~This sentencing~~
10 ~~is public safety achieved through punishment, rehabilitation, and~~
11 ~~restorative justice. When a sentence includes incarceration, this~~
12 ~~purpose is best served by terms that are proportionate to the~~
13 ~~seriousness of the offense with provision for uniformity in the~~
14 ~~sentences of offenders committing the same offense under similar~~
15 ~~circumstances. The Legislature further finds and declares that the~~
16 ~~elimination of disparity and the provision of uniformity of~~
17 ~~sentences can best be achieved by determinate sentences fixed by~~
18 ~~statute in proportion to the seriousness of the offense as determined~~
19 ~~by the Legislature to be imposed by the court with specified~~
20 ~~discretion.~~

21 (2) ~~Notwithstanding paragraph (1), the~~ The Legislature further
22 finds and declares that programs should be available for inmates,
23 including, but not limited to, ~~educational programs, educational,~~
24 ~~rehabilitative, and restorative justice programs~~ that are designed
25 ~~to promote behavior change and to prepare nonviolent felony all~~
26 ~~eligible offenders for successful reentry into the community. The~~
27 ~~Legislature encourages the development of policies and programs~~
28 ~~designed to educate and rehabilitate nonviolent felony all eligible~~
29 ~~offenders. In implementing this section, the Department of~~
30 ~~Corrections and Rehabilitation is encouraged to give priority~~
31 ~~enrollment in programs to allow all eligible inmates the opportunity~~
32 ~~to enroll in programs that promote successful return to the~~
33 ~~community to an inmate with a short remaining term of~~
34 ~~commitment and a release date that would allow him or her~~
35 ~~adequate time to complete the program. community. The~~
36 ~~Department of Corrections and Rehabilitation is directed to~~
37 ~~establish a mission statement consistent with these principles.~~

38 (3) In any case in which the ~~punishment~~ sentence prescribed by
39 statute for a person convicted of a public offense is a term of
40 imprisonment in the state prison, or a term pursuant to subdivision

(h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the ~~punishment~~ sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that he or she shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to

1 the time set for imposition of judgment, either party or the victim,
2 or the family of the victim if the victim is deceased, may submit
3 a statement in aggravation or mitigation to dispute facts in the
4 record or the probation officer's report, or to present additional
5 facts. In determining whether there are circumstances that justify
6 imposition of the upper or lower term, the court may consider the
7 record in the case, the probation officer's report, other reports,
8 including reports received pursuant to Section 1203.03, and
9 statements in aggravation or mitigation submitted by the
10 prosecution, the defendant, or the victim, or the family of the victim
11 if the victim is deceased, and any further evidence introduced at
12 the sentencing hearing. The court shall set forth on the record the
13 facts and reasons for imposing the upper or lower term. The court
14 may not impose an upper term by using the fact of any
15 enhancement upon which sentence is imposed under any provision
16 of law. A term of imprisonment shall not be specified if imposition
17 of sentence is suspended.

18 (c) The court shall state the reasons for its sentence choice on
19 the record at the time of sentencing. The court shall also inform
20 the defendant that as part of the sentence after expiration of the
21 term he or she may be on parole for a period as provided in Section
22 3000 or 3000.08 or postrelease community supervision for a period
23 as provided in Section 3451.

24 (d) (1) When a defendant subject to this section or subdivision
25 (b) of Section 1168 has been sentenced to be imprisoned in the
26 state prison or county jail pursuant to subdivision (h) and has been
27 committed to the custody of the secretary or the county correctional
28 administrator, the court may, within 120 days of the date of
29 commitment on its own motion, or at any time upon the
30 recommendation of the secretary or the Board of Parole Hearings
31 in the case of state prison inmates, or the county correctional
32 administrator in the case of county jail inmates, recall the sentence
33 and commitment previously ordered and resentence the defendant
34 in the same manner as if he or she had not previously been
35 sentenced, provided the new sentence, if any, is no greater than
36 the initial sentence. The court resentencing under this subdivision
37 shall apply the sentencing rules of the Judicial Council so as to
38 eliminate disparity of sentences and to promote uniformity of
39 sentencing. Credit shall be given for time served.

1 (2) (A) (i) When a defendant who was under 18 years of age
2 at the time of the commission of the offense for which the
3 defendant was sentenced to imprisonment for life without the
4 possibility of parole has ~~served~~ *been incarcerated for* at least 15
5 ~~years of that sentence, years~~, the defendant may submit to the
6 sentencing court a petition for recall and resentencing.

7 (ii) Notwithstanding clause (i), this paragraph shall not apply
8 to defendants sentenced to life without parole for an offense where
9 *it was pled and proved that* the defendant tortured, as described
10 in Section 206, his or her victim or the victim was a public safety
11 official, including any law enforcement personnel mentioned in
12 Chapter 4.5 (commencing with Section 830) of Title 3, or any
13 firefighter as described in Section 245.1, as well as any other officer
14 in any segment of law enforcement who is employed by the federal
15 government, the state, or any of its political subdivisions.

16 (B) The defendant shall file the original petition with the
17 sentencing court. A copy of the petition shall be served on the
18 agency that prosecuted the case. The petition shall include the
19 defendant's statement that he or she was under 18 years of age at
20 the time of the crime and was sentenced to life in prison without
21 the possibility of parole, the defendant's statement describing his
22 or her remorse and work towards rehabilitation, and the defendant's
23 statement that one of the following is true:

24 (i) The defendant was convicted pursuant to felony murder or
25 aiding and abetting murder provisions of law.

26 (ii) The defendant does not have juvenile felony adjudications
27 for assault or other felony crimes with a significant potential for
28 personal harm to victims prior to the offense for which the sentence
29 is being considered for recall.

30 (iii) The defendant committed the offense with at least one adult
31 codefendant.

32 (iv) The defendant has performed acts that tend to indicate
33 rehabilitation or the potential for rehabilitation, including, but not
34 limited to, availing himself or herself of rehabilitative, educational,
35 or vocational programs, if those programs have been available at
36 his or her classification level and facility, using self-study for
37 self-improvement, or showing evidence of remorse.

38 (C) If any of the information required in subparagraph (B) is
39 missing from the petition, or if proof of service on the prosecuting
40 agency is not provided, the court shall return the petition to the

1 defendant and advise the defendant that the matter cannot be
2 considered without the missing information.

3 (D) A reply to the petition, if any, shall be filed with the court
4 within 60 days of the date on which the prosecuting agency was
5 served with the petition, unless a continuance is granted for good
6 cause.

7 (E) If the court finds by a preponderance of the evidence that
8 ~~one or more of the statements in the petition are true, the court~~
9 ~~shall hold a hearing to consider whether to~~ *specified in clauses (i)*
10 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*
11 *the sentence and commitment previously ordered and hold a*
12 *hearing to resentence the defendant in the same manner as if the*
13 *defendant had not previously been sentenced, provided that the*
14 *new sentence, if any, is not greater than the initial sentence.*
15 *Victims, or victim family members if the victim is deceased, shall*
16 *retain the rights to participate in the hearing.*

17 (F) The factors that the court may consider when determining
18 whether to ~~recall and~~ *resentence the defendant to a term of*
19 *imprisonment with the possibility of parole* include, but are not
20 limited to, the following:

21 (i) The defendant was convicted pursuant to felony murder or
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications
24 for assault or other felony crimes with a significant potential for
25 personal harm to victims prior to the offense for which the ~~sentence~~
26 ~~is being considered for recall.~~ *defendant was sentenced to life*
27 *without the possibility of parole.*

28 (iii) The defendant committed the offense with at least one adult
29 codefendant.

30 (iv) Prior to the offense for which the ~~sentence is being~~
31 ~~considered for recall,~~ *defendant was sentenced to life without the*
32 *possibility of parole,* the defendant had insufficient adult support
33 or supervision and had suffered from psychological or physical
34 trauma, or significant stress.

35 (v) The defendant suffers from cognitive limitations due to
36 mental illness, developmental disabilities, or other factors that did
37 not constitute a defense, but influenced the defendant's
38 involvement in the offense.

39 (vi) The defendant has performed acts that tend to indicate
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,
2 or vocational programs, if those programs have been available at
3 his or her classification level and facility, using self-study for
4 self-improvement, or showing evidence of remorse.

5 (vii) The defendant has maintained family ties or connections
6 with others through letter writing, calls, or visits, or has eliminated
7 contact with individuals outside of prison who are currently
8 involved with crime.

9 (viii) The defendant has had no disciplinary actions for violent
10 activities in the last five years in which the defendant was
11 determined to be the aggressor.

12 (G) The court shall have the discretion to recall the sentence
13 and commitment previously ordered and to resentence the
14 defendant in the same manner as if the defendant had not
15 previously been sentenced, provided that the new sentence, if any,
16 is not greater than the initial sentence. The discretion of the court
17 shall be exercised in consideration of the criteria in subparagraph
18 (B). (F). Victims, or victim family members if the victim is
19 deceased, shall be notified of the resentencing hearing and shall
20 retain their rights to participate in the hearing.

21 (H) If the sentence is not recalled, *recalled or the defendant is*
22 *resentenced to imprisonment for life without the possibility of*
23 *parole*, the defendant may submit another petition for recall and
24 resentencing to the sentencing court when the defendant has been
25 committed to the custody of the department for at least 20 years.
26 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*
27 *or the defendant is resentenced to imprisonment for life without*
28 *the possibility of parole* under that petition, the defendant may file
29 another petition after having served 24 years. The final petition
30 may be submitted, and the response to that petition shall be
31 determined, during the 25th year of the defendant's sentence.

32 (I) In addition to the criteria in subparagraph (F), the court may
33 consider any other criteria that the court deems relevant to its
34 decision, so long as the court identifies them on the record,
35 provides a statement of reasons for adopting them, and states why
36 the defendant does or does not satisfy the criteria.

37 (J) This subdivision shall have retroactive application.

38 (K) *Nothing in this paragraph is intended to diminish or*
39 *abrogate any rights or remedies otherwise available to the*
40 *defendant.*

1 (e) (1) Notwithstanding any other law and consistent with
2 paragraph (1) of subdivision (a), if the secretary or the Board of
3 Parole Hearings or both determine that a prisoner satisfies the
4 criteria set forth in paragraph (2), the secretary or the board may
5 recommend to the court that the prisoner's sentence be recalled.

6 (2) The court shall have the discretion to resentence or recall if
7 the court finds that the facts described in subparagraphs (A) and
8 (B) or subparagraphs (B) and (C) exist:

9 (A) The prisoner is terminally ill with an incurable condition
10 caused by an illness or disease that would produce death within
11 six months, as determined by a physician employed by the
12 department.

13 (B) The conditions under which the prisoner would be released
14 or receive treatment do not pose a threat to public safety.

15 (C) The prisoner is permanently medically incapacitated with
16 a medical condition that renders him or her permanently unable
17 to perform activities of basic daily living, and results in the prisoner
18 requiring 24-hour total care, including, but not limited to, coma,
19 persistent vegetative state, brain death, ventilator-dependency, loss
20 of control of muscular or neurological function, and that
21 incapacitation did not exist at the time of the original sentencing.

22 The Board of Parole Hearings shall make findings pursuant to
23 this subdivision before making a recommendation for resentence
24 or recall to the court. This subdivision does not apply to a prisoner
25 sentenced to death or a term of life without the possibility of parole.

26 (3) Within 10 days of receipt of a positive recommendation by
27 the secretary or the board, the court shall hold a hearing to consider
28 whether the prisoner's sentence should be recalled.

29 (4) Any physician employed by the department who determines
30 that a prisoner has six months or less to live shall notify the chief
31 medical officer of the prognosis. If the chief medical officer
32 concurs with the prognosis, he or she shall notify the warden.
33 Within 48 hours of receiving notification, the warden or the
34 warden's representative shall notify the prisoner of the recall and
35 resentencing procedures, and shall arrange for the prisoner to
36 designate a family member or other outside agent to be notified
37 as to the prisoner's medical condition and prognosis, and as to the
38 recall and resentencing procedures. If the inmate is deemed
39 mentally unfit, the warden or the warden's representative shall

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

3 (5) The warden or the warden's representative shall provide the
4 prisoner and his or her family member, agent, or emergency
5 contact, as described in paragraph (4), updated information
6 throughout the recall and resentencing process with regard to the
7 prisoner's medical condition and the status of the prisoner's recall
8 and resentencing proceedings.

9 (6) Notwithstanding any other provisions of this section, the
10 prisoner or his or her family member or designee may
11 independently request consideration for recall and resentencing
12 by contacting the chief medical officer at the prison or the
13 secretary. Upon receipt of the request, the chief medical officer
14 and the warden or the warden's representative shall follow the
15 procedures described in paragraph (4). If the secretary determines
16 that the prisoner satisfies the criteria set forth in paragraph (2), the
17 secretary or board may recommend to the court that the prisoner's
18 sentence be recalled. The secretary shall submit a recommendation
19 for release within 30 days in the case of inmates sentenced to
20 determinate terms and, in the case of inmates sentenced to
21 indeterminate terms, the secretary shall make a recommendation
22 to the Board of Parole Hearings with respect to the inmates who
23 have applied under this section. The board shall consider this
24 information and make an independent judgment pursuant to
25 paragraph (2) and make findings related thereto before rejecting
26 the request or making a recommendation to the court. This action
27 shall be taken at the next lawfully noticed board meeting.

28 (7) Any recommendation for recall submitted to the court by
29 the secretary or the Board of Parole Hearings shall include one or
30 more medical evaluations, a postrelease plan, and findings pursuant
31 to paragraph (2).

32 (8) If possible, the matter shall be heard before the same judge
33 of the court who sentenced the prisoner.

34 (9) If the court grants the recall and resentencing application,
35 the prisoner shall be released by the department within 48 hours
36 of receipt of the court's order, unless a longer time period is agreed
37 to by the inmate. At the time of release, the warden or the warden's
38 representative shall ensure that the prisoner has each of the
39 following in his or her possession: a discharge medical summary,
40 full medical records, state identification, parole or postrelease

1 community supervision medications, and all property belonging
2 to the prisoner. After discharge, any additional records shall be
3 sent to the prisoner's forwarding address.

4 (10) The secretary shall issue a directive to medical and
5 correctional staff employed by the department that details the
6 guidelines and procedures for initiating a recall and resentencing
7 procedure. The directive shall clearly state that any prisoner who
8 is given a prognosis of six months or less to live is eligible for
9 recall and resentencing consideration, and that recall and
10 resentencing procedures shall be initiated upon that prognosis.

11 (11) The provisions of this subdivision shall be available to an
12 inmate who is sentenced to a county jail pursuant to subdivision
13 (h). For purposes of those inmates, "secretary" or "warden" shall
14 mean the county correctional administrator and "chief medical
15 officer" shall mean a physician designated by the county
16 correctional administrator for this purpose.

17 (f) Notwithstanding any other provision of this section, for
18 purposes of paragraph (3) of subdivision (h), any allegation that
19 a defendant is eligible for state prison due to a prior or current
20 conviction, sentence enhancement, or because he or she is required
21 to register as a sex offender shall not be subject to dismissal
22 pursuant to Section 1385.

23 (g) A sentence to state prison for a determinate term for which
24 only one term is specified, is a sentence to state prison under this
25 section.

26 (h) (1) Except as provided in paragraph (3), a felony punishable
27 pursuant to this subdivision where the term is not specified in the
28 underlying offense shall be punishable by a term of imprisonment
29 in a county jail for 16 months, or two or three years.

30 (2) Except as provided in paragraph (3), a felony punishable
31 pursuant to this subdivision shall be punishable by imprisonment
32 in a county jail for the term described in the underlying offense.

33 (3) Notwithstanding paragraphs (1) and (2), where the defendant
34 (A) has a prior or current felony conviction for a serious felony
35 described in subdivision (c) of Section 1192.7 or a prior or current
36 conviction for a violent felony described in subdivision (c) of
37 Section 667.5, (B) has a prior felony conviction in another
38 jurisdiction for an offense that has all the elements of a serious
39 felony described in subdivision (c) of Section 1192.7 or a violent
40 felony described in subdivision (c) of Section 667.5, (C) is required

1 to register as a sex offender pursuant to Chapter 5.5 (commencing
2 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
3 and as part of the sentence an enhancement pursuant to Section
4 186.11 is imposed, an executed sentence for a felony punishable
5 pursuant to this subdivision shall be served in state prison.

6 (4) Nothing in this subdivision shall be construed to prevent
7 other dispositions authorized by law, including pretrial diversion,
8 deferred entry of judgment, or an order granting probation pursuant
9 to Section 1203.1.

10 (5) (A) Unless the court finds, in the interest of justice, that it
11 is not appropriate in a particular case, the court, when imposing a
12 sentence pursuant to paragraph (1) or (2), shall suspend execution
13 of a concluding portion of the term for a period selected at the
14 court's discretion.

15 (B) The portion of a defendant's sentenced term that is
16 suspended pursuant to this paragraph shall be known as mandatory
17 supervision, and, unless otherwise ordered by the court, shall
18 commence upon release from physical custody or an alternative
19 custody program, whichever is later. During the period of
20 mandatory supervision, the defendant shall be supervised by the
21 county probation officer in accordance with the terms, conditions,
22 and procedures generally applicable to persons placed on probation,
23 for the remaining unserved portion of the sentence imposed by the
24 court. The period of supervision shall be mandatory, and may not
25 be earlier terminated except by court order. Any proceeding to
26 revoke or modify mandatory supervision under this subparagraph
27 shall be conducted pursuant to either subdivisions (a) and (b) of
28 Section 1203.2 or Section 1203.3. During the period when the
29 defendant is under that supervision, unless in actual custody related
30 to the sentence imposed by the court, the defendant shall be entitled
31 to only actual time credit against the term of imprisonment imposed
32 by the court. Any time period which is suspended because a person
33 has absconded shall not be credited toward the period of
34 supervision.

35 (6) The sentencing changes made by the act that added this
36 subdivision shall be applied prospectively to any person sentenced
37 on or after October 1, 2011.

38 (7) The sentencing changes made to paragraph (5) by the act
39 that added this paragraph shall become effective and operative on

1 January 1, 2015, and shall be applied prospectively to any person
2 sentenced on or after January 1, 2015.

3 (i) This section shall become operative on January 1, ~~2017~~.
4 2022.

5 *SEC. 3. Section 1.1 of this bill incorporates amendments to*
6 *Section 1170 of the Penal Code, as amended by Section 1 of*
7 *Chapter 378 of the Statutes of 2015, proposed by both this bill and*
8 *Assembly Bill 2590. It shall only become operative if (1) both bills*
9 *are enacted and become effective on or before January 1, 2017,*
10 *(2) each bill amends Section 1170 of the Penal Code, as amended*
11 *by Section 1 of Chapter 378 of the Statutes of 2015, and (3) this*
12 *bill is enacted after Assembly Bill 2590, in which case Section 1*
13 *of this bill shall not become operative.*

14 *SEC. 4. Section 2.1 of this bill incorporates amendments to*
15 *Section 1170 of the Penal Code, as amended by Section 2 of*
16 *Chapter 378 of the Statutes of 2015, proposed by both this bill and*
17 *Assembly Bill 2590. It shall only become operative if (1) both bills*
18 *are enacted and become effective on or before January 1, 2017,*
19 *(2) each bill amends Section 1170 of the Penal Code, as amended*
20 *by Section 2 of Chapter 378 of the Statutes of 2015, and (3) this*
21 *bill is enacted after Assembly Bill 2590, in which case Section 2*
22 *of this bill shall not become operative.*